



United States Government

NATIONAL LABOR RELATIONS BOARD
1099 14th STREET NW
WASHINGTON DC 20570

April 23, 2015

Steve Zappetini & Son, Inc.
Case 20-CA-114390

The Respondent's requests that the Board accept its untimely-filed exceptions and supporting brief are denied. The Respondent has failed to show good cause for its failure to file timely exceptions or timely requests for extensions of time to file exceptions.¹ In these circumstances, where the

¹ Contrary to the Respondent's assertions, at all steps of this proceeding Region 20 clearly explained the Respondent's filing obligations to the Respondent's owner, Dave Zappetini. In this regard, because the Respondent was not represented by counsel at the time, counsel for the General Counsel sent Zappetini detailed information regarding the Board's rules for filing exceptions and requests for extensions of time. On May 16, 2014, the Region's trial attorney, Yasmin Macariola, sent an email to Zappetini, which stated:

Please see Section 102.46 of the NLRB's rules and regulations on how to file an exception (which is an appeal). I have copied and pasted it below. Please also remember, that until you offer Vernon reinstatement, the backpay he is owed continues to accrue and is not tolled.

This email included the complete text of Section 102.46. On June 3, in response to Zappetini's request for advice on how to get an extension of time for filing his appeal, Macariola sent him an email, which asked him to

Please refer to section 102.111 of the rules and regulations regarding the service and filing of papers. In particular you should look at Sections (b)(4) and (c)(2).

Macariola included in this email the complete text of Section 102.111, which includes specific instructions on filing exceptions and requests for extensions of time to file exceptions, including when such documents are due.

Respondent was, on several occasions, specifically advised of the Board's rules and regulations concerning filing and was clearly notified concerning the extended due date for the filing of exceptions, the Respondent's asserted reasons for its late filings do not rise to the level of excusable neglect. *Union of Elevator Constructors (Unitec Elevator Services Co.)*, 337 NLRB 426 (2002). The Respondent was treated fairly throughout this proceeding, and the "particular circumstances" offered as grounds for granting the requests to accept the late-filed exceptions are insufficient to justify such a result.²

Despite this advice, the Respondent subsequently filed an untimely request for an extension of time. The Board nevertheless granted the Respondent an extension of time to August 5 to file its exceptions. The Board's order provided that no further extensions of time would be granted, and explained that, pursuant to Sec. 102.111(b) of the Board's Rules and Regulations, if not electronically filed with the Board through the Agency's website by 11:59 p.m. EDT on August 5, the exceptions must be postmarked or deposited with a delivery service no later than August 4, 2014.

No exceptions were filed with the Board by the new August 5 due date. Instead, on August 14, the Board's Executive Secretary was administratively advised by Region 20 that the Respondent's *pro bono* attorney, Nancy McCarthy, had submitted to the Region a letter addressed to the Executive Secretary, dated and postmarked August 5, with attached Exceptions and Brief, a request for additional time to August 20 to file Amended Exceptions, and a request for oral argument before the Board. The Region forwarded this submission to the Office of the Executive Secretary, which rejected McCarthy's August 5 letter and accompanying exceptions and briefs and other requests, as untimely. Subsequently, on August 20, McCarthy submitted a letter to the Executive Secretary stating that she "will seek to establish the necessary good cause to show that [Respondent's] exceptions should be considered."

On September 2, Zappetini filed a letter titled "Appeal requesting consideration of my appeal papers." Zappetini's letter claimed that "All along this NLRB process I feel I have been misled and not given any fair chance by your lawyers and the NLRB judge." On September 10, Zappetini filed with the Board another "Appeal requesting consideration of my appeal papers." This letter does not offer any reason for the Respondent's failure to file timely exceptions or a timely request for a second extension of time.

² Member Miscimarra agrees that the exceptions at issue were filed late based on Respondent's neglect, but Member Miscimarra believes it is appropriate to grant the request to accept the late exceptions in the particular circumstances of this case (the exceptions were filed by mail one day late on the date they would have been timely if filed electronically; the Respondent was participating in this matter *pro se* when the relevant deadline was established; it appears that Respondent did not accurately convey the relevant postmark deadline to the *pro bono* attorney who filed the exceptions; the lateness of one day does not appear to have caused undue prejudice; and this matter is already before the Board based on exceptions filed by the charging party).

By direction of the Board:

Henry S. Breiteneicher
Associate Executive Secretary

cc: Parties